

ISSUE DATE: March 4, 1997

DOCKET NO. P-421/EM-96-1403

ORDER APPROVING RATE REDUCTION AND BNA TARIFF, AS MODIFIED

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Edward A. Garvey
Joel Jacobs
Marshall Johnson
Mac McCollar
Don Storm

Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of U S WEST Communications,
Inc.'s Petition to Decrease Rates for Billing
Name and Address Services

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PROCEDURAL HISTORY

On November 12, 1996, U S WEST Communications, Inc. (USWC or the Company) submitted a proposal to reduce the rates it charges for its Billing Name & Address Services (BNAS). USWC offers BNAS to operator service providers, enhanced service providers, telecommunications carriers, and others who intend to directly bill USWC's end-users for completing a collect, third-party, or USWC-issued calling card call. USWC proposed to reduce the rate from \$0.26 to \$0.17 per listing to retain customers that currently purchase BNA information from the Company.

On November 22, 1996, the Minnesota Department of Public Service (the Department) filed comments recommending approval of the rate reduction.

On December 2, 1996, the Residential and Small Business Utilities Division of the Office of the Attorney General (RUD-OAG) submitted comments recommending that the Commission modify the BNA tariff 1) to assure that all end-users have the opportunity to withhold the disclosure of BNA information and 2) to clarify that a request for Billed Number Screening (BNS) constitutes an affirmative request to withhold BNA information.

On December 12, 1996, the Department submitted reply comments.

The Commission met to consider this matter on February 18, 1997.

FINDINGS AND CONCLUSIONS

A. Rate Reduction

USWC proposed to reduce the rates for its Billed Name & Address Services (BNAS) from \$0.26 to \$0.17 per listing to retain customers that currently purchase billing name and address

information from USWC. The Department recommended that the Commission approve the proposed rate reduction and the RUD-OAG did not address this issue.

The Commission finds that the proposed reduction is reasonable and will approve it. The Commission finds that the proposed rate is significantly above cost and the projected revenue impact of the reduction is not significant.

B. Consent to Disclose BNA Information

The RUD-OAG expressed concern with the end-user's ability to withhold disclosure of the BNA information. The RUD-OAG cited the FCC's Rules and Regulations Part 64.2102(e)(3) which states:

No local exchange company shall disclose the billing name and address information associated with any subscriber who has affirmatively withheld consent for disclosure of BNA information.

The RUD-OAG argued that the FCC Rules prohibit USWC from placing any limitation on which end-users can block disclosure of BNA information. The RUD-OAG requested that the Commission direct USWC to insert the following language at Section 8.10(B) of the BNA tariff:

USWC will not disclose the billing name and address information associated with any subscriber who has affirmatively withheld consent for disclosure of BNA information.

The Department agreed with the RUD-OAG's position on this issue.

The Commission finds that the tariff language recommended by the RUD-OAG and supported by the Department is appropriate. As the RUD-OAG noted, the FCC Rules clearly provide that any end user may withhold disclosure of its BNA information. The tariff language proposed by the RUD-OAG properly safeguards implementation of that Rule. The Commission will approve it.

C. Construction of "Affirmatively Withheld"

All parties agreed that once an end user has affirmatively withheld consent to the disclosure of his or her billing name and address information to third parties, the rule prohibits USWC from disclosing to BNAS customers (or any third party) the end user's billing name and address. At issue, however, is whether an end user's subscription to Billed Number Screening (BNS) should be deemed as "affirmatively withholding consent" to disclosure of the end user's billing name and address to third parties, such as BNAS subscribers.

The RUD-OAG argued that it was. The Department disagreed. Having reviewed this matter in this matter and in a related docket¹, the Commission rejects the RUD-OAG's position. In the Commission's view, the action taken by an end user in subscribing to Billed Number Screening does not support the inference of "affirmative" end user intent to withhold BNA information as urged by the RUD-OAG.

Billed Number Screening is a local service provided to subscribing end users by a local exchange company (LEC), USWC. When an end user subscribes to Billed Number Screening, USWC submits the end user's telephone number to an information bank known as Line Information Data Base (LIDB) with an indication whether the subscriber wishes to block third party calls or collect calls or both. Carriers requested to complete third-party and collect calls can access or "dip" the information bank to see if the number they are being asked to reach has requested blocking. If the carrier finds that the intended call recipient has requested blocking of the type of call initiated, the carrier informs the call initiator of that fact and the call is terminated without reaching the intended call recipient.²

In determining what inference may be appropriately drawn about the end user's intent solely from the fact that he/she subscribed to Billed Number Screening it is important to understand what Billed Number Screening (BNS) does: Billed Number Screening is the service that promises to prevent certain calls from coming in on a line that is protected by the service. It is fair to infer, therefore, that in subscribing to BNS, the end user has the intent to prevent or block certain unwanted in-coming calls (third-party calls, collect calls, or both).

By the same token, it is not reasonable to infer from the act of subscribing to BNS an intent to do something that BNS does not do. Billed Number Screening does not withhold or arrange for the withholding of any information about the subscriber from anyone. It simply blocks certain incoming calls. Hence it would be unreasonable to impute to end users an intent to withhold billing name and address information based strictly on the fact, as urged by the RUD-OAG, that they have subscribed to Billed Number Screening.

Other indicators of the unreasonableness of inferring such intent are:

- The problem addressed by Billed Number Screening is unwanted third-party and/or collect calls. This is not at all the same problem addressed by customers who express a desire to prevent disclosure of billing name and address information to BNAS subscribers.

¹ See In the Matter of GTE Minnesota's Petition to Enhance and Make Additions to Billing Name and Address Services, Docket No. P-407/EM-96-1390, ORDER APPROVING TARIFF AS MODIFIED (January 29, 1997.)

² "Billed Number Screening" is not so titled because it screens or blocks the release of the end user's billed number. It does not do that. Instead, Billed Number Screening screens certain calls from coming in on lines which have been identified with reference to the line's billed number.

- The people whose calls are prevented by BNS from reaching the subscriber's phone are not the same people who would be prevented from receiving billing name and address information about the BNS subscriber if the BNS subscriber were to affirmatively withhold consent to the disclosure of his/her billing name and address information.

Based on this analysis, the Commission finds it impossible to infer that an end user's subscription to BNS (expression of intent to block receipt of certain calls) is the equivalent of an intent to affirmatively withhold consent to have BNA information about the end user disclosed to BNAS subscribers.

While the Commission cannot equate the intent to subscribe to Billed Number Screening (BNS) with the intent to withhold BNA information, for reasons discussed above, it would be entirely logical and reasonable for the Company to ask the end user, when he or she subscribes to BNS, whether the subscriber would also like to block the disclosure of billing name and address information about the end user to BNAS subscribers. The end user's affirmative expression of desire to block release of such information would then clearly control. The Company has acknowledged the logic and feasibility of such an approach, which would appear to resolve the underlying concern in a practical and productive manner.

D. Charges For Improperly Delivered Calls

A related concern is that from time to time calls that the BNS subscriber is paying to have blocked (third-party calls, collect calls, or both) may be delivered to the subscriber's receiving telephone. This can occur, for example, when the company carrying the third-party or collect call delivers that call without first accessing ("dipping") the LIDB to learn that the call target has subscribed to BNS and that, therefore, the call should not be delivered. In these circumstances, it would be unfair to require the BNS subscriber to pay for any such call.

USWC's current practice is not to charge the BNS subscriber for any such improperly delivered calls (or to give credit for the call if paid for by the subscriber) once it learns of such call from the subscriber. The Company has agreed to continue this practice. To assure continuation of this customer safeguard, the Commission will direct the Company to modify its tariff to reflect this policy.

ORDER

1. The petition filed by U S WEST Communications, Inc. in this matter dated November 12, 1996 is approved, contingent upon the filing of two modifications in the Company's tariffs as follows:
 - a. USWC shall insert the following language at Section 8.10(B) of its Billing Name & Address Services (BNAS) tariff:

USWC will not disclose the billing name and address information associated with any subscriber who has affirmatively withheld consent for disclosure of BNA information.

- b. USWC shall insert language in its Billing Number Screening (BNS) tariff reflecting the following policy:

Upon learning that a call has been improperly delivered (as described in the text of this Order) to a BNS subscriber, USWC will not charge the subscriber for any such improperly delivered call or will give credit for the call if paid by the subscriber.

2. Within 30 days of this Order, USWC shall file the BNAS and BNS tariffs, modified as required by Ordering Paragraph 1.
3. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

(S E A L)

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